IN THE

Supreme Court of the United States

OCTOBER TERM, 1916.

ARKADELPHIA MILLING COMPANY.....*Appellant,*

v. No. 845.

ST. LOUIS, SOUTHWESTERN RAILWAY COMPANY AND ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY .....*Appellees.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE EASTERN DISTRICT OF ARKANSAS.

MOTION OF APPELLEES TO DISMISS APPEAL.

Appellees pray that said appeal be dismissed on the ground that this court has no jurisdiction to hear and determine the same and acquired no jurisdiction thereof by virtue of the aforesaid proceedings and appeal.

JOHN M. MOORE,
Attorney for Appellees.

AGREED STATEMENT OF FACTS.

The appellees brought separate suits against the State Railroad Commission of Arkansas to enjoin the

rates prescribed by statute of the State and the orders of the Railroad Commission for the transportation of freight and passengers on railroads within the State on the ground that the same were confiscatory and in violation of the provisions of section 1, article 14 of the amendments to the Constitution of the United States. The jurisdiction of the Federal court depended solely upon the question that the laws of the State fixing rates for transportation on railroads were in violation of the Constitution of the United States. Temporary injunctions were issued and continued in force during the pendency of the suits. On final hearing the bills were sustained and a decree perpetuating the injunction entered in each case. Appeals were prayed by the defendants to this court, the cases were heard together, and the decrees of the circuit court were reversed at the October term, 1912, on the ground that the allegations were not sustained by the evidence, and the cases were remanded with directions to dismiss the bills without prejudice. (Allen v. St. Louis, I. M. & S. Ry. Co., 230 U. S. 553.) After the cases were remanded to the district court (the circuit court having in the meantime been abolished), decrees were rendered in pursuance of the mandate dissolving the injunction and appointing a master to take an account and determine the claims for overcharges collected from passengers and shippers on the railroads during the time the injunc-

tions were in force. (Printed Record, 14.) The appellants filed claims in each of the cases for the refund of the difference between the rates prescribed by the law of the State for the transportation of freight and those put in force by the appellees during the time the injunctions were in force. The claims were allowed by the master, and upon the filing of his report appellees filed exceptions to the allowance thereof on the ground that the commission tariff regulating the rates on the commodities involved in the shipments made by the claimant were in the alternative and discriminated against a large class of shippers in said State, and were void (Printed Record, 25).

The district court sustained appellee's exceptions on said ground and entered orders disallowing appellant's claims. The proceedings were consolidated and other claims were by the court allowed, and both parties desiring to appeal and being in doubt as to whether the appeal lay to this court or to the Circuit Court of Appeals, prayed and were allowed appeals to both courts, which are now pending. This motion to dismiss is filed for the purpose of having the question of jurisdiction settled before the case is reached on its merits.

Appellants waive notice of said motion and agree that it be submitted without delay, to the end that the question involved may be disposed of at an early date,

and before the case is reached on its merits in this court or in the Circuit Court of Appeals.

J. F. Loughborough,
Attorney for Appellants.
John M. Moore,
Attorney for Appellees.

BRIEF IN SUPPORT OF MOTION TO DISMISS.

Where the jurisdiction of the district court rests solely on the ground that the suit arose under the Constitution of the United States, the appellate jurisdiction of the Supreme Court is made exclusive by section 5 of the Judiciary Act of 1891, Judicial Code, section 128; Loeb v. Columbia Township Trustees, 179 U. S. 472, 479.

The jurisdiction of the district court over the main controversy rested solely on the ground that the cause of action arose under the Constitution of the United States, and the point to be decided is whether the proceedings subsequent to the final decree of the district court pursuant to the mandate from this court, and the order of reference to the special master contained therein is, for the purpose of this inquiry, to be attributed to the original source of jurisdiction, or if the question on which the right of appeal to this court depends must arise in this proceeding.

In Carey v. Houston & Texas Central Ry. Co., 150 U. S. 170, 180, a proceeding to set aside a former decree on the grounds of fraud and want of jurisdiction, it was held that it is the jurisdiction of the district court over the particular case in which the appeal is prosecuted that justifies an appeal direct to this court, and that no question of jurisdiction over the suit in which the former decree was rendered can be availed of to sustain an appeal from the decree to be reviewed in the case before the court. This court treated it as a separate and distinct case from the original proceeding so far as the inquiry before it was concerned, and said: "No question of jurisdiction over the foreclosure suit before the rendition of a decree passed therein can be availed of to sustain the present appeal from the decree in this proceeding." The case came before this court again in 161 U. S. 115, 130, 132, on appeal from a decree rendered in the Circuit Court of Appeals, for the Fifth circuit, to which an appeal had been taken from the decree of the circuit court, and the court held that a suit in equity by a corporation, or the stockholders thereof, in the circuit court to set aside a final decree against a corporation in a foreclosure suit on the ground that the decree was obtained by collusion and fraud, and that the court had no jurisdiction, was ancillary, and a continuation of the main suit, so far as the jurisdiction of the circuit court as a court of the

United States is concerned; that the jurisdiction of the circuit court over the suit rested on its jurisdiction over the case in which the decree sought to be impeached was rendered, in which the jurisdiction depended entirely upon diverse citizenship, and that as the jurisdiction of the circuit court was invoked throughout the litigation on the ground of diverse citizenship, the decree of the Circuit Court of Appeals was final.

We realize that there are points of difference growing out of the fact that the decree here appealed from was rendered in the same case as the original decree dissolving the injunction and dismissing the bill, and that the constitutional question was the sole ground of jurisdiction in the case; and we confess a doubt as to the application of the rulings cited to the facts of this case.

Respectfully submitted,

John M. Moore,

Attorney for Appellees.

BRIEF IN RESPONSE TO MOTION TO DISMISS.

The points involved on the appeal in this case are substantially the same as those involved in case No. 846, Jos. F. Hasty and Wm. C. Hasty, composing the partnership of J. F. Hasty & Sons, Appellants, v. St.

Louis Southwestern Railway Company and St. Louis, Iron Mountain & Southern Railway Company, Appellees, on which a motion to dismiss the appeal was filed by appellees, and is now pending.

On this appeal, as on the one just mentioned, the proceedings are ancillary to a proceeding in which the jurisdiction of the court below was invoked solely on the ground of the construction or application of the Constitution of the United States. The point involved on this appeal is whether the rates prescribed by the Railroad Commission of the State of Arkansas deny rights guaranteed by the Constitution of the United States, and deny the appellees equal protection of the law and constitute a taking of its property without due process of law.

The exception sustained by the court below presented the point that the rates promulgated by the Arkansas Railroad Commission, applicable to these shipments, discriminated against other shippers in favor of shippers in the class of appellants and to the extent of the difference in the rates between classes they constitute a taking of the property of appellees without due process of law, and deny to appellees equal protection of the law.

Therefore, whether the jurisdiction of the district court in the main case or the point involved on this par-

ticular appeal is looked to, the jurisdiction on appeal from the district court is in this court, and not in the Circuit Court of Appeals.

A memorandum brief on these points is filed in case No. 846, to which we refer, *infra*, p. 12.

Respectfully submitted,

J. F. Loughborough,

Attorney for Appellants.

JOS. F. HASTY AND WM. C. HASTY, COMPOSING THE PARTNERSHIP OF J. F. HASTY & SONS ..... *Appellant,*

v. No. 846.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY AND ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ..... *Appellees.*

MOTION OF APPELLEES TO DISMISS APPEAL.

Appellees pray that said appeal be dismissed on the ground that this court has no jurisdiction to hear and determine the same and acquired no jurisdiction thereof by virtue of the aforesaid proceedings and appeal.

John M. Moore,
Attorney for Appellees.

AGREED STATEMENT OF FACTS.

The appellees brought separate suits against the State Railroad Commission of Arkansas to enjoin the rates prescribed by statute of the State and the orders of the Railroad Commission for the transportation of freight and passengers on railroads within the State on the ground that the same were confiscatory and in violation of the provisions of section 1, article 14, of the

Amendments to the Constitution of the United States. The jurisdiction of the Federal court depended solely upon the question that the laws of the State fixing rates for transportation on railroads were in violation of the Constitution of the United States. Temporary injunctions were issued and continued in force during the pendency of the suits. On final hearing the bills were sustained and a decree perpetuating the injunction entered in each case. Appeals were prayed by the defendants to this court, the cases were heard together and the decrees of the circuit court were reversed at the October term, 1912, on the ground that the allegations were not sustained by the evidence, and the cases were remanded with directions to dismiss the bills without prejudice. (Allen v. St. Louis, I. M. & S. Ry. Co., 230 U. S. 553.) After the cases were remanded to the district court (the circuit court having in the meantime been abolished), decrees were rendered in pursuance of the mandate dissolving the injunction and appointing a master to take an account and determine the claims for overcharges collected from passengers and shippers on the railroads during the time the injunctions were in force (Printed Record, 14). The appellants filed claims in each of the cases for the refund of the difference between the rates prescribed by the law of the State for the transportation of freight and those put in force by the appellees during the time the

injunctions were in force. The claims were allowed by the master, and upon the filing of his report appellees filed exceptions to the allowance thereof on the grounds: First, that the shipments on which the claim for refund was based constituted interstate commerce, and the rates were not governed by the State laws; second, that the commission tariff regulating the rates on the commodities involved in the shipments made by the claimant were in the alternative and discriminated against a large class of shippers in said State, and was void (Printed Record, 25).

The district court sustained appellee's exceptions on both grounds and entered orders disallowing appellant's claims. The proceedings were consolidated and other claims were by the court allowed, and both parties desiring to appeal and being in doubt as to whether the appeal lay to this court or to the Circuit Court of Appeals, prayed and were allowed appeals to both courts which are now pending. This motion to dismiss is filed for the purpose of having the question of jurisdiction settled before the case is reached on its merits.

Appellants waive notice of said motion and agree that it be submitted without delay, to the end that the question involved may be disposed of at an early date.

and before the case is reached on its merits in this court, or in the Circuit Court of Appeals.

J. F. Loughborough,
Attorney for Appellants.

John M. Moore,
Attorney for Appellees.

BRIEF IN SUPPORT OF MOTION TO DISMISS.

The questions involved in this motion are the same in principle as those raised on the similar motion filed in No. 846, which comes to this court upon the same record as this case.

We therefore refer the court to the cases cited in the brief accompanying motion to dismiss in No. 845, *supra*, p. 4.

Respectfully submitted,

John M. Moore,
Attorney for Appellees.

BRIEF IN RESPONSE TO MOTION TO DISMISS.

The jurisdiction of the district court in the main suit was based upon a right claimed under the Constitution of the United States, and one of the questions presented by this appeal involves a construction of the Constitution of the United States. Thus, under section 238 of the Judicial Code, the case should be appealed

direct to this court, whether it is considered that the right of appeal is governed by the jurisdiction of the court below in the main case or the questions involved in the ancillary proceedings.

There can be no question that the proceedings involved on these appeals are ancillary, and that the jurisdiction of the court below in the main case involved the construction or application of the Constitution of the United States. It has been repeatedly held in analogous cases, that the jurisdiction on appeal in the ancillary case is related to and governed by the jurisdiction in the main case. Rouse v. Letscher, 156 U. S. 47; Gregory v. Van EE, 160 U. S. 643; Gobleman v. Peoria, etc., Ry. Co., 179 U. S. 335, 342; Colorado, etc., Mining Co. v. Turck, 150 U. S. 138; Murphy v. Colorado Paving Co., 166 U. S. 719; Darragh v. Manufacturing Co., 169 U. S. 735.

In Carey v. H. & T. C. Ry. Co., 150 U. S. 170, 180, it appeared that a bill was filed to set aside a foreclosure sale on the ground of fraud. It was not an intervention or bill of review in the foreclosure suit, but in form was an independent proceeding to obtain relief in a court of equity against fraud. Jurisdiction in the foreclosure suit was predicated on diverse citizenship. This court held that the actual question presented on

the appeal did not involve a construction of the Constitution, and that the appeal would not lie to this court.

In Carey v. H. & T. C. Ry. Co., 161 U. S. 115, 128, the same case was before this court on appeal from the Circuit Court of Appeals, and this court then held that the right of appeal from the Circuit Court of Appeals to this court was governed by the jurisdiction of the circuit court, and that as the jurisdiction of the trial court was sought to set aside a sale ordered by that court, the proceeding was ancillary to the foreclosure suit, and as the jurisdiction in the foreclosure suit was because of diverse citizenship, there was no right of appeal from the Circuit Court of Appeals to this court. It should be noticed that in neither of the decisions commented on, was the appeal to this court sought to review a question involving construction or application of the Constitution.

In McFadden v. U. S., 213 U. S. 288, 291, 293, the distinction between the right of appeal from the district court direct to this court, and the right of appeals from the Circuit Court of Appeals to this court, was made plainer.

A material point presented by these appeals involves the construction of the interstate commerce clause in the Constitution, and the court is directly called upon to construe or apply the Constitution. It

seems plain that this court has jurisdiction on appeal without regard to the jurisdiction in the main case. Horner v. U. S., 143 U. S. 570, 577; Loeb v. Columbia Township, 179 U. S. 472; Press Publishing Co. v. Monroe, 164 U. S. 105.

Respectfully submitted,

J. F. Loughborough,

Attorney for Appellants.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY AND ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ..... *Appellants,*

v. No. 847.

SOUTHERN COTTON OIL COMPANY..... *Appellee.*

MOTION OF APPELLEE TO DISMISS APPEAL.

Appellee prays that said appeal be dismissed on the ground that this court has no jurisdiction to hear and determine the same, and acquired no jurisdiction thereof by virtue of the aforesaid proceedings.

J. F. Loughborough,
Attorney for Appellee.

AGREED STATEMENT OF FACTS.

The claims were allowed by the master, and upon filing his report, appellants filed exceptions to the allowance thereof, on the grounds:

First. Because the final decree in the district court relieved appellants from liability for such overcharges.

Second. Because the final decree of the district court granting the injunction relieved appellants from liability for overcharges collected after the date of said

decree (Printed Record, 16). The court overruled the exceptions of appellants on both grounds, and rendered a judgment against them for the amount found by the master.

The appellees brought separate suits against the State Railroad Commission of Arkansas to enjoin the rates prescribed by statute of the State and the orders of the Railroad Commission for the transportation of freight and passengers on railroads within the State on the ground that the same were confiscatory and in violation of the provisions of section 1, article 14, of the Amendments to the Constitution of the United States. The jurisdiction of the Federal court depended solely upon the question that the laws of the State fixing rates for transportation on railroads were in violation of the Constitution of the United States. Temporary injunctions were issued and continued in force during the pendency of the suits. On final hearing the bills were sustained and a decree perpetuating the injunction entered in each case. Appeals were prayed by the defendants to this court, the cases were heard together and the decrees of the circuit court were reversed at the October term, 1912, on the ground that the allegations were not sustained by the evidence, and the cases were remanded with directions to dismiss

the bills without prejudice. (Allen v. St. Louis, I. M. & S. Ry. Co., 230 U. S. 533.) After the cases were remanded to the district court (the circuit court having in the meantime been abolished), decrees were rendered in pursuance of the mandate dissolving the injunction and appointing a master to take an account and determine the claims for overcharges collected from passengers and shippers on the railroads during the time the injunctions were in force (Printed Record, 14). The appellants filed claims in each of the cases for the refund of the difference between the rates prescribed by the law of the State for the transportation of freight and those put in force by the appellees during the time the injunctions were in force.

The proceedings were consolidated and other claims were by the court allowed. Both parties desiring to appeal and being in doubt as to whether the appeal lay to this court or to the Circuit Court of Appeals, prayed and were allowed appeals to both courts which are now pending. This motion to dismiss is filed for the purpose of having the question of jurisdiction settled before the case is reached on its merits.

Appellants waive notice of said motion and agree that it be submitted without delay, to the end that the question involved may be disposed of at an early date,

and before the case is reached on its merits in this court or in the Circuit Court of Appeals.

John M. Moore,
Attorney for Appellants.

J. F. Loughborough,
Attorney for Appellees.

BRIEF IN SUPPORT OF MOTION TO DISMISS.

A somewhat similar question to that presented by this motion is pending in the cases of Arkadelphia Milling Co., Appellant, v. St. Louis Southwestern Ry. Co., and others, No. 845, and Jos. F. Hasty and others, v. St. Louis Southwestern Ry. Co., and others, No. 846, the appeals in those cases being consolidated here with these in one record. The point presented by this motion is that while the jurisdiction in the main suit involved the construction and application of the Constitution, the points presented by these appeals do not involve those questions, but present questions of general law, *i. e.*, the question of liability of the appellants for the overcharges in view of the fact that the district court by final decree, permitted their collection, and the further point that there is no liability for such overcharges collected after the final decree was rendered. The practice in such cases seems governed by the decision in Carey v. Houston & Texas Central Ry.

Co., 150 U. S. 170, 180, and McFadden v. U. S., 213 U. S. 288, 291, 293. As we understand the rule, an appeal will lie to this court direct from the district court only where the actual and substantial questions presented by the appeal involve the construction or application of the Constitution, and that the general rule that jurisdiction on appeal in an ancillary proceeding is related to the jurisdiction in the main case, does not apply. This arises from the construction of the act of Congress, bearing in mind that the Circuit Courts of Appeal were created to relieve this court. Thus, in cases like Rouse v. Letscher, 156 U. S. 47, where the jurisdiction of the court below in the main case was invoked on the ground of diverse citizenship, appeals in all ancillary proceedings should be to the Circuit Court of Appeals; and if the actual question presented on the appeal in the ancillary proceeding involved a construction of the Constitution, an appeal could be taken from the Circuit Court of Appeals to this court.

We appreciate that the rule has its disadvantages, and particularly so in a case like this, where part of the ancillary proceedings could be appealed direct to this court, but that part must be appealed to the Court of Appeals, and from there to this court, although some of the questions involved on the respective appeals are the same; and we realize that the rule will

not carry out the spirit of the Judicial Code and simplify proceedings; but because of separate appeals to separate tribunals will involve delay and expense, although this court is the court of last resort in all the appeals.

Respectfully submitted,

J. F. Loughborough,
Attorney for Appellees.

BRIEF IN RESPONSE TO MOTION TO DISMISS.

Counsel attempt to distinguish this case from Nos. 445 and 446 on the ground that while the jurisdiction of the main suit involved the construction and application of the Constitution the points upon which this case was decided in the court below did not involve those questions, but presented questions of general law.

They cite the case of Carey v. Houston & Texas Central Railway Company, 150 U. S. 170. In that case a bill was filed to set aside and vacate a decree rendered in a former case on the ground of fraud and want of jurisdiction. No question of jurisdiction arose in the instant case. The contention was that the question of jurisdiction was in issue because the bill attacked the jurisdiction of the circuit court in a former proceeding, which resulted in the decree appel-

lant was seeking to set aside. It was held that the case before the court was a separate and distinct case from the preceding case so far as the question of jurisdiction was concerned. That it is the jurisdiction of the court below over the particular case in which the appeal from the decree is prosecuted that justifies an appeal direct to the Supreme Court and no question of jurisdiction over a former suit, the decree in which is sought to be set aside, can be availed of to sustain an appeal to the Supreme Court from a decree of the circuit court in the later case.

This case seems to be distinguishable on the ground that the proceeding grew out of and was ancillary to the decree in the main case and was in fact only another step in a later stage of the original proceeding, the jurisdiction over which was dependent on the jurisdiction of the court over the main case, and the questions involved on the appeal relate solely to the effect to be given to the decree in the main case. Where there is no independent ground of jurisdiction over an ancillary proceeding, the jurisdiction on appeal will be ascribed to the jurisdiction in the main case.

In Rouse v. Fletcher, 156 U. S. 47, the right of appeal from the judgment of the Circuit Court of Appeals on the claim of an intervener in a foreclosure

proceeding, in which the jurisdiction depended on diverse citizenship, was asserted on the ground that the proceeding by intervention arose under the Constitution and laws of the United States because the cause of action was asserted against the receivers, as officers of the United States court, and arose as alleged by reason of negligence on their part in the course of their receivership. The court held that the intervention was entertained as belonging to that class of proceedings recognized as allowable where property sought to be charged is *in custodia legis*, and not on any other ground, and that jurisdiction of the circuit court was not to be ascribed to grounds independent of the jurisdiction in the main suit; and we submit the same rule should be applied in this case.

Gregory v. Van EE, 160 U. S. 643, 645.

Shulthis v. McDougal, 225 U. S. 561, 568.

Pope v. L. N. A. etc. Ry., 173 U. S. 573, 577.

Kentucky State Board of Control v. Lewis, 176 Fed. 556.

Respectfully submitted,

JOHN M. MOORE.